

lit.

BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

PORT OF KINGSTON,

Appellant,

v.

KITSAP COUNTY,

Respondent.

SHB NO. 91-43

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter came on for hearing before the Washington State Shorelines Hearings Board on March 24, 1992, in Kingston, Washington, Kitsap County. Board members in attendance were Annette S. McGee, Presiding, Chairman Harold S. Zimmerman, Attorney Member Judith A. Bendor, Nancy Burnett, Martin Carty, and Mary Lou Block, along with Legal Advisor John H. Buckwalter, Administrative Law Judge.

Attorney John F. Mitchell of Sanchez, Paulson, Mitchell and Laurie represented appellant Port of Kingston. Kitsap County Deputy Prosecutor Douglas B. Fortner represented respondent Kitsap County.

Proceedings were recorded by Court Reporter Randi R. Hamilton, Gene Barker and Associates, Olympia, Washington.

At issue was Kitsap County's condition number seven (7) on approved Shoreline Development Permit Number 599, granted to the Port of Kingston.

Port of Kingston's appeal of Kitsap County's condition seven (7), "New covered moorage shall not exceed the height of the existing covered moorage of C and D Docks," and condition eight (8), "All covered moorage, docks C, D, and E shall be painted blue to reduce

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2 the visibility and glare prior to final inspection of E dock" was filed with the Board on August
3 5, 1991, and became SHB case No. 91-43.

4 On February 4, 1992, parties stipulated to deleting condition eight (8) from the appeal,
5 leaving only condition seven (7) for the hearing on the merits.

6 The site was visited by the Board. At the hearing witnesses were sworn and testified,
7 exhibits were examined and arguments of counsel were considered. From these, the Board
8 makes these

9 FINDINGS OF FACT

10 I

11 The Port of Kingston (Port), a Port District of the State of Washington, operates a two
12 hundred seventy (270) slip marina within Appletree Cove located in Puget Sound, Kitsap
13 County, Kingston, Washington.

14 II

15 The Port's marina is composed of five (5) permanent moorage piers, (Docks A through
16 E) and a guest dock and fuel pier. Docks C and D offer covered moorage. All are situated
17 within a dredged basin, protected from Admiralty Inlet of Puget Sound by a large rock
18 breakwater.

19 III

20 A Washington State ferry landing facility is adjacent to the Port property to the
21 northeast. The Washington State Department of Transportation (WDOT) is currently
22 constructing an overhead passenger loading ramp on the northeasterly property which will
23 extend forty-six feet vertically from the deck of the ferry loading pier which is approximately
24 ten feet above the high water line.

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2 IV

3 The Port of Kingston applied to Kitsap County in October, 1990, for a shoreline
4 development permit to construct covered moorage for E Dock. The project is designed to
5 extend twenty-six (26) feet vertically from the waterline of the moorage floats. The covered
6 moorage will rise and fall with the tide.

7 The permit was approved with eight conditions including condition number seven
8 which requires that the new covered moorage shall not exceed the height of the existing
9 covered moorage on C and D Docks, twenty-two feet, six inches, instead of the twenty-six
10 which was requested.

11 V

12 A prior shoreline substantial development permit was granted to the Port in 1986 which
13 included replacing existing piers and floats with concrete and to build shelters over them.

14 The shelters over C and D Docks were completed and constructed at twenty-two feet
15 six inches in height. However, available funding was exhausted before E Dock could have the
16 shelter built over it.

17 All floats were engineered and installed to provide flotation for the weight of the roof
18 structures.

19 VI

20 E Dock moorage floats are fifty feet in length, and are intended to moor boats
21 substantially larger and taller than those moored at C and D Docks where the floats or finger
22 piers are shorter for smaller boats. E Dock has fourteen slips of which seven are forty and
23 seven are fifty feet.

VII

With the increased length of E Dock, a one in twelve slope to the roof, as used in the construction of C & D Docks, would result in a lower net height. Testimony was offered that if the highest point was twenty-two feet six inches and the slopes caused a reduction of four additional feet, the opening for the boat entrance would be approximately eighteen feet less the four foot height of the structural truss supporting the roof under fifteen feet.

Twelve larger boats are currently moored at the fourteen E Dock spaces. Two are twelve feet high, one is thirteen feet high, one is sixteen and one half feet high, five are seventeen feet high and two are seventeen and a half feet high. Only three of the twelve could use E Dock with covers twenty-two feet, six inches in height. However, all could be accommodated under a twenty-six foot height.

VIII

The Port maintains that covered moorage is needed to provide additional services to marine users at an existing planned public site.

Covered moorage for larger boats would increase long-term funding to the Port District which would assist them in pursuing future increased water related projects, such as beach access trails, launch ramps, small boat facilities, and enhancing sewage pumpout stations.

IX

Testimony was offered that view blockage would occur for those looking easterly, if the twenty-six foot shelter over E Dock was allowed, but there is already view blockage by the twenty-two foot six inch covers and the WDOT ferry passenger terminal presently being constructed.

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2 X

3 It is an undisputed fact that the Port of Kingston's Master Plan, when adopted, included
4 a visioning workshop portion which lists priorities and goals and that under the subheading
5 "Moorage" we find a goal that states, "new covered moorage not to exceed height of existing."

6 Furthermore, it is also undisputed that Kitsap County Shoreline Management Master
7 Program, Section XI, part 7, "Ports and Water Related Industries" contains the following
8 regulation:

9 "Proposed Port developments, expansions, alterations or any phase
10 thereof should be consistent with and based upon an officially adopted
comprehensive port development plan."

11 XI

12 Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

13 From the Findings of Fact the Board makes these

14 CONCLUSIONS OF LAW

15 I

16 The Board has jurisdiction over the parties and subject matter of this action. Appellant
17 has the burden of proof. RCW 98.58.180.

18
19 II

20 At issue in this case is Kitsap County's requirement of condition number 7 on Shoreline
21 Development Permit No. 599, "New covered moorage shall not exceed the height of the
22 existing covered moorage on C and D Docks," and whether or not the proposed project is
23 consistent with the Shoreline Management Act, Chapter 90.58 RCW and the Kitsap County
24 Shoreline Management Master Program (KCSMMP).

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2 III

3 The Board concludes that the proposed project is consistent with the policy of the
4 Shoreline Management Act. It provides additional services to marine users at an existing
5 planned public site with no major impact on existing environment except for a minimal view
6 blockage to the east.

7 Furthermore, the height restriction imposed by Kitsap County does nothing to protect
8 aesthetics of the area, which are already impacted by the existing marina and which will be far
9 more substantially impacted by the erection of the WDOT's overhead ferry passenger ramp.

10 IV

11 The proposed project, part of a planned re-development of the marina since 1986, is
12 consistent with the RCW 90.58.020 in managing the shoreline, protecting against adverse
13 environmental effects, resulting in long term or short term benefit, increasing public access to
14 publicly owned areas, and providing for water recreational opportunities. The Board's
15 decisions in the past have been to favor well-planned marina developments. SHB 81-26, 87-5,
16 87-6 and 166.

17 V

18 Under the KCSMMP, Use Activities Boating Facilities V, marinas are permitted in
19 urban, semi-rural environments. The proposed project is part of a well-planned existing
20 marina, and it provides protection and storage for larger boats. Therefore, under this section,
21 the project is consistent with the KCSMMP.

22 VI

23 The Board has found and concluded, so far, that the project does not harm shoreline
24 values. Nor has there been evidence of adverse environmental impact.

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2 The sole remaining question is whether the height of the proposed covered moorage as
3 a matter of law is required by the Kingston Shoreline Management Master Program
4 (KCSMMP) to be twenty-two feet six inches. We conclude that it does not. The KCSMMP
5 refers us to another agency's actions, stating:

6 Proposed Port developments [...] should be consistent with and based upon an
7 officially adopted comprehensive port development plan [...] Section XI, part 7.
8 We conclude this language is advisory. We have held in a long line of Shoreline cases,
9 "should" is not mandatory. Such a reference to another entity's future actions, is very
10 different from an adopted Shoreline Plan itself, reciting a specific dimensional requirement,
11 such as for a setback. Additionally, the "advice" in this instance has not been shown to
12 advance shoreline values. Lastly, such a consistency inquiry would increasingly take us distant
13 from our basic jurisdiction. See, Foulks v. King County and Washington State Department of
14 Transportation, SHB No. 80-17; see, Tulalip Tribes of Washington v. City of Everett, et al.,
15 Order Granting Motion for Dismissal of Issues Concerning Tribal Treaty Rights, (January 8,
16 1988),

17 VII

18 Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.
19 From these Conclusion of Law, the Board enters this:

ORDER

Kitsap County Shoreline Substantial Development Permit #599 is APPROVED with
Condition Number seven DELETED.

DONE this 10th day of June, 1992.

SHORELINES HEARINGS BOARD

Annette S. McGee
ANNETTE S. MCGEE, Presiding

Harold S. Zimmerman
HAROLD S. ZIMMERMAN, Chairman

Judith A. Bendor
JUDITH A. BENDOR, Member

Nancy Burnett
NANCY BURNETT, Member

Martin Cart
MARTIN CARTY, Member

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MARY LOU BLOCK, Member

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